

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 25581

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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NESTOR BATALON and EVA (ANDRES) BATALON, Husband and Wife,  
Plaintiffs-Appellants

vs.

ESTRELLA RAMSICAL and JAVIER RAMSICAL, Husband and Wife  
(Owners of 94-545 Apii Street), Defendants-Appellees

and

DOE Defendants 1-10, Defendants

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 01-1-2540)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson and Nakayama, JJ.,  
Intermediate Court of Appeals Chief Judge Burns,  
in place of Acoba, J., unavailable,  
and Circuit Judge Marks, assigned by reason of vacancy)

Upon review of the statements supporting and contesting jurisdiction, the motion to dismiss appeal and the record, it appears that the judgment entered on August 26, 2002 is the appealable final judgment on the complaint filed in Civil No. 01-1-2540. The time for appealing the August 26, 2002 judgment was extended to December 20, 2002 pursuant to HRAP 4(a)(3) by the filing of the August 22, 2002 motion for attorneys' fees and costs, but notice of appeal was not filed until January 9, 2003. Entry of the December 10, 2002 "amended judgment" did not affect the time for appealing the August 26, 2002 judgment inasmuch as the December 10, 2002 amended judgment did not alter the

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August 26, 2002 entry of judgment on the plaintiffs' claims and did not create a right of appeal where one did not exist. See Poe v. Hawai'i Labor Relations Bd., 98 Hawai'i 416, 49 P.3d 382 (2002). The appeal of the August 26, 2002 judgment is untimely and we lack jurisdiction over this appeal. See HRAP 26(b); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion). Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 14, 2003.